

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

No. 1:23-cv-00108-LMB-JFA

GOOGLE LLC'S FIFTH STATUS REPORT
REGARDING DOCUMENT REVIEW AND PRODUCTION

Pursuant to the Court's order of September 15, 2023, ECF No. 440, Google LLC ("Google") submits this report regarding the status of the review and production of documents impacted by the ingestion site issue (the "Impacted Documents"), *see* ECF No. 422.

Google has completed its production of responsive and non-privileged Impacted Documents, with one narrow exception described below. Between September 8 and October 6, 2023, Google produced a total of 1,995,869 documents. This production of nearly 2 million documents to Plaintiffs—on top of roughly 3 million documents produced during the pre-complaint investigation and roughly 1 million additional documents produced in this litigation before September 8—results from considerable efforts by Google, its vendors, and its outside counsel to expedite normal review and production processes.

There is one narrow aspect of Google's production of Impacted Documents that has not yet been fully completed. As reported previously, while preparing a privilege log, Google, including its outside counsel, has continued to closely scrutinize documents that have been

identified as privileged. As commonly occurs whenever privilege logs are prepared, Google may determine that some of those documents can be produced in full or in part and, in those cases, it will produce (i.e., “throwback”) those documents. Google has worked to minimize the number of these “throwbacks” by undertaking privilege-log preparation in parallel with its review and production and, on October 13, Google made a production of 148 throwback documents. Although the governing ESI Order provides for production of privilege logs “within 45 days of each production,” *see* ECF No. 142, ¶ V(1), Google is endeavoring to complete its privilege log preparation and throwback productions by October 23 or shortly thereafter. As previously reported, ECF No. 478, this exercise is unlikely to result in the production of a significant number of additional documents.

To ensure that there are no gaps in the productions, Google’s outside counsel and its vendors—including KPMG, which was retained by Google and outside counsel to perform a confirmatory audit of Google’s document production—have been confirming the steps taken to collect, review, and produce documents. The audit is nearly complete, and it resulted in a production of 3,319 documents this week.¹ Google anticipates completing the process in the coming days and will produce any additional documents identified as soon as possible. Based on the current status, Google anticipates that the production will be comparable in size to the number of documents produced this week.

¹ In accordance with the ESI Order (ECF No. 142 at 26), Google will promptly produce any documents linked in the 104 emails in these productions. As previously reported “[t]he automated process used to search for linked documents cannot reasonably capture the full universe of linked documents swept in by the ESI Order until after the emails that contain links to those documents have already been identified for production.” ECF No. 467, at 3.

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